SUPREME COURT, U. S.

FILED
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IN THE

# Supreme Court of the United States

October Term, 1969

## No. 564

MRS. VIOLET ROSE FOY,
Individually, and as Tutrix of her minor children,
TOMMY RAY FOY, SCOTTY JOE FOY and LEROY FOY,
Plaintiff-Appellee,

versus

ED TAUSSIG, INC.,
and
THE TRAVELERS INSURANCE COMPANY,
Defendants-Appellants.

## REPLY TO THE PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

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REPLY TO THE PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

To The Honorable United States Supreme Court:

The Respondents, Ed Taussig, Inc. and The Travelers Insurance Company, respectfully pray that this Honorable Court deny the application.

**RESPONSE TO THE "REASONS FOR GRANTING THE WRIT"**

The fundamental question raised by petitioner is whether or not a state appellant court may review

the facts in a civil case tried before a jury in a lower court and not be in violation of the Seventh and Fourteenth Amendments to the United States Constitution.

This issue was raised in the case of *Walker vs. Sauvinet*, 92 U.S. 90, 23 L.Ed. 678, (1875), in which Mr. Chief Justice Waite considered the applicability of the Seventh Amendment to a state civil action.

> "The states, so far as this Amendment is concerned, are left to regulate trials in their own courts in their own way. A trial by jury in suits at common law pending in the state courts is not, therefore, a privilege or immunity of national citizens, which the States are forbidden by the Fourteenth Amendment to abridge. A State cannot deprive a person of his property without due process of law; but this does not necessarily imply that all trials in the state courts affecting the property of persons must be by jury. This requirement of the Constitution is met, if the trial is had according to the settled course of judicial proceedings." (Page 679).

The case of *Walker vs. Sauvinet*, supra. has been followed in numerous cases since its rendition in 1875. In the case of *New York Central R.R. Co. vs. White*, 243 U.S. 188, 37 S.Ct. 247, (1917), this Court held:

> "No question is made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard re-

> quired by the 14th Amendment. The denial of a trial by jury is not inconsistent with 'due process'. Walker vs. Sauvinet, 92 U.S. 90, 23 L.Ed. 678; Frank vs. Mangum, 237 U.S. 309, 340, 59 L.Ed. 960, 985, 35 S.Ct. Rep. 582." (Page 254).

A trial of a workmen's compensation claim without a jury was thus held to be consistent with due process which clearly indicates that there is no constitutional or statutory mandate requiring a trial by jury in a state civil action.

The issue was again considered in the case of *Hardware Dealers' Mutual Fire Insurance Company vs. Glidden Company,* 284 U.S. 151, 52 S.Ct. 69, (1931), in which this Court stated:

> "The Fourteenth Amendment neither implies that all trials must be by jury, nor guarantees any particular form or method of state procedure. See Missouri, ex rel Hurwitz vs. North, 271 U.S. 40, 70 L.Ed. 818, 46 S.Ct. 384. In the exercise of that power and to satisfy a public need, a state may choose the remedy best adapted, in the legislative judgment, to protect the interests concerned, provided its choice is not unreasonable or arbitrary, and the procedure it adopts satisfies the constitutional requirements of reasonable notice and opportunity to be heard." (Page 71)

The case of *Hardware Dealers Mutual Fire Insurance Company vs. Glidden Company,* supra., clearly

stands for the proposition that the Seventh Amendment has no applicability to a state's judicial system with respect to civil matters. The recent case of *Olesen vs. Trust Company of Chicago,* 245 F. 2d 522 (7th Cir. 1957), certiorari denied 355 U.S. 896, 78 S.Ct. 270, succinctly stated the law as applied to jury trials in a state civil matter.

> "It is clear there is no Federal question involved in the case at bar. The Seventh Amendment of the United States Constitution applies to trials in the United States courts. Bute vs. People of State of Illinois, 333 U.S. 640, 657 (footnote), 68 S.Ct. 763, 92 L.Ed. 986. Trial by jury in civil actions in state courts may be modified by a state or abolished altogether. Walker vs. Sauvinet, 92 U.S. 90, 23 L.Ed. 678; Maxwell vs. Dow, 176 U.S. 581, 20 S.Ct. 494, 44 L.Ed. 597; New York Central R.R. Co. vs. White, 243 U.S. 188, 208, 37 S. Ct. 247, 61 L.Ed. 667; Wagner Electric Manufacturing Company vs. Lindon, 262 U.S. 226, 232, 43 S.Ct. 589, 67 L.Ed. 961.
>
> A denial of trial by jury in a state court is not a denial of due process of law under the Fourteenth Amendment. 'The Fourteenth Amendment neither implies that all trials must be by jury, nor guarantees any particular form or method of state procedure.' Hardware Dealers' Mutual Fire Insurance Company of Wisconsin v. Glidden Company, 284 U.S. 151, 158, 52 S.Ct. 69, 71, 76 L.Ed. 214." (Page 524).

This Honorable Court has recently denied writs of certiorari in three cases appealed from decisions of the courts of Louisiana. They are: *Sule vs. Missouri Pacific Railroad Co.*, 385 U.S. 819, 87 S.Ct. 46 (1966); *King vs. Vico Insurance Company of St. Louis*, 385 U.S. 841, 87 S.Ct. 90 (1966); *Broussard vs. State Farm Mutual Automobile Insurance Company*, 386 U.S. 909, 87 S.Ct. 855 (1967). These cases all involved appeals taken from verdicts reached by a jury. In each case the jury verdict was either reversed or modified. In each case this Honorable Court denied writs of certiorari.

It is therefore submitted that the issue presented by petitioner has been disposed of by this Honorable Court on numerous occasions and adversely to the position asserted by the petitioner.

WHEREFORE, respondents, respectfully pray that this Honorable Court deny the petition for writ of certiorari to the Supreme Court of the State of Louisiana.

Respectfully submitted,

HOLT & WOODLEY

EDMUND E. WOODLEY

## CERTIFICATE

I CERTIFY that a copy of the foregoing has been served upon the parties hereto by U. S. mail, postage prepaid, as follows:

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Lake Charles, Louisiana, this ____ day of October, 1969.

EDMUND E. WOODLEY